



# புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G. O. Rt. No. 93/Lab./AIL/T/2017,  
Puducherry, dated 15th June 2017)

NOTIFICATION

Whereas, the Award in I.D(T).No. 12/2008, dated 6-4-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. Pond's Exports Limited (Foot Wear Factory), Puducherry and Pondicherry, Hindustan Thozhilalar Sangam (PHLTS), Puducherry over charter of demands such as increase of Basic Pay for each grade, Annual increment, fixed dearness allowance for 2000 points variable dearness allowance, HRA, Production incentive Pay, etc., has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O.Ms.No.20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

E. VALLAVAN,  
Additional Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT AT PUDUCHERRY**

*Present* : Thiru G.THANENDRAN, B.COM., M.L.,  
Presiding Officer,

*Thursday, the 6th day of April, 2017*

**I.D. (T) No. 12/2008**

Pondicherry Hindustan, . . . Petitioner  
Thozhilalar Sangam (PHLTS)  
No. LIG 204, Housing Board,  
Kurumbapet, Muthirayarpalayam,  
Puducherry.

*Versus*

The Managing Director,  
M/s. Pond's Exports Limited,  
(Foot Wear Factory),  
Post Box No. 18, Vazhudavur Road,  
Puducherry. . . Respondent.

This industrial dispute coming on 14-2-2017 for final hearing before me in the presence of Tvl. P. R. Thiruneelakandan and A. Mithun Chakkaravarthy, Counsel for the petitioner Thiru L. Sathish, Counsel for the respondent upon bearing both sides upon perusing the case records, after having stood over for consideration till this day, this Court passed the following;

AWARD

1. This industrial dispute has been referred by the Government as per the G.O. Rt. No.161/AIL/LAB/J/2008, dated 15-12-2008 for adjudicating the following:-

(i) Whether the dispute raised by Pondicherry Hindustan Thozhilalar Sangam against the management of M/s. Pond's Exports Limited (Foot Wear Factory), Puducherry, over charter of demands such as increase of Basic Pay for each grade, annual increment, fixed dearness allowance for 2000 points, variable dearness allowance, HRA, Production incentive Pay, etc., is justified or not?

(ii) If justified, what relief, the Union is entitled to?

(iii) To compute the relief, if any, awarded in terms of money if, it can be so computed ?

2. *The petitioner in its claim petition has stated as follows:-*

(i) The Pondicherry Hindustan Thozhilar Sangam is a registered Trade Union and the union had raised the charter of demand for wage revision before the Management of respondent *vide* letter, dated 1-3-2008, the respondent did not consider the demands of the Union and on the other hand, compelled the entire workers to opt for voluntary retirement and left from the service, the Union workers did not accept the proposal of the management and raised the industrial dispute over the charter of demand for wage revision and other allowances before the Labour Officer (Conciliation), Puducherry. Several rounds of direct talks were held between the petitioner union and the respondent management, but, no settlement was arrived at between them, the conciliation proceeding ended in failure, hence, the conciliation had left the matter to this Industrial Tribunal for adjudication and accordingly, the Government of Puducherry referred this dispute to this Tribunal for adjudication with the above-mentioned issues.

(ii) The respondent factory started in the year 1989 and it is a subsidiary of Hindustan Unilever Limited which is a Multi-national company of United Kingdom and the company deals in variety of consumer goods

and established brand name for various products and had an annual turnover of several Hundred of Crores and it had common balance sheet for all its division, the company acquired a number of leading Indian Companies during the last fifteen years and its financial capacity is very well to meet the wage demand of the petitioner union, the company availing benefits like substantial Sales Tax concession, power concession and substantial subsidies given by the Government and setup his factory in various places of the Union territory of Puducherry, that in the respondent factory more than 200 permanent workers and 400 Casual and Contract workers engaged in the day to day production activities, the first batch of the workmen were recruited in the year 1989 as a trainee, they were paid ₹ 475 per month as a consolidated pay, and no bonus given to them and in the case of temporary workers they were paid ₹ 17.10 per day and in the year 1993, the workers were made permanent, and they were paid a sum of ₹ 1,600 consolidated per month.

(iii) Initially, there was no trade union, after formation of petitioner Trade Union first time in the year 1995 the union raised the charter of demand and entered into the 18(1) settlement with the respondent management, thereby the workers were got increased from 1600 to 2275 and thereafter, the Union entered several settlement with the management with regard to the wage revision of the workers, that in the year 2002, the Union raised the charter of demand for wage revision before the management and thereafter, the said matter went to this Court for adjudication, meanwhile, the respondent management entered into the 18(1) settlement with the individual workers and reported before this Tribunal in the said dispute that the majority of the individual workers were accepted the wage revision, accordingly, the said industrial dispute was closed as against which the petitioner union preferred the Writ Petition WP. No. 25952 of 2008 same is pending before the High Court, while so, the last settlement entered between the Management and the workers, came to an end in the year 2007, hence, the petitioner union raised the new charter of demand for wage revision *etc.*, on 7-3-2008, but, the Management did not consider the demand of the workers and also wanted to recruit the new workers for very meager wage, instead of considering the demand of the workers who put their length of service in the respondent management, hence, the petitioner union raised charter of demand for wage revision, ultimately the matter went to the Conciliation Officer and now, it has been referred before this Tribunal that the petitioner union raised the charter of demand for wage revision and other allowances.

(iv) The Union stated that 99 % of the workers are married and have children and also parents to support, therefore, for a family of four, to support itself in Puducherry region, approximately a sum of ₹ 27,400. There is no comparable Industry in Puducherry region with kind of financial capacity of the respondent management, therefore, it not possible to apply the standard of comparable Industry in the Puducherry region in respect of dispute. The quantum of wage revision and facilities are (i) The need of workmen and his dependants, (ii) The capacity of the respondent management to the meet above need, (iii) The wage levels of Supervisor, Executive and Managerial Staff and upwards, (iv) The overall Expenditure pattern of respondent management on various counts, (v) And the wage structure of the other unit of the respondent management both in Puducherry region and other States, hence, the union prays this Court to pass an Award revising the wage in terms of the charter of demand, dated 7-3-2008, Annexure-I with retrospective effect from 31-10-2016 and issue such further or other appropriate orders or direction as deemed fit and proper, Award cost in favour of the workmen for the legal proceeding.

3. *The respondent in its counter has stated as follows :*

(i) The respondent denied all the allegations contained in the claim statement and the respondent unit had two recognized unions *viz*: Ponds Export Ltd Workers Welfare Association (PELWWA) and Pond's Exports Uzhaipalar Sangam (PEUS) which have been representing majority of workmen and the petitioner union was formed in the year 1995 and it was minority union commending less than 10% representations and was an un-recognized union and from the year 2002, the respondent unit witnessed downward due to the prices of all leather products saw downward slide and many international buyers had drastically reduced their intake and had imposed strict quality standards leading to huge rejection of products and inspite of such slump in its business, the respondent was determined to run the Puducherry factory, the poor performance of the respondent's factory in general is fully known to all its workers including the petitioner union and inspite of all adversaries in the business, the respondent had never compromised on welfare of its workers and had always paid the best salary package to its workers as per long term settlements from time to time, the average salary for the unskilled and skilled workers as on 2008 were around ₹ 8,500 and ₹ 9,600 respectively, which was far higher than any of the comparative industries in and around Puducherry.

(ii) Apart from the salary the respondent also had various welfare schemes for workers, such as subsidized canteens, family day gatherings, sports day functions, family planning benefit, *etc.*, and the last wage settlement between respondent and its majority union PELWWA was on 24-10-2002 which expired on 30-9-2006, which was acceptable to all the workers, was unacceptable to six office bearers of petitioner union against which the petitioner had filed I.D.2/2002 for wage revision and other issues and the industrial dispute was dismissed on merits on 19-12-2006, specifically holding that petitioner is bound by the majority decision and against the findings in ID (T).2/2002 the petitioner challenged before Hon'ble High Court in W.P.No.25952/2008 and the Hon'ble High Court once again upheld the settlement with the majority workers, dated 24-10-2002 and in exercise of its extraordinary jurisdiction, directed the respondent to extend the benefits of settlement, dated 24-10-2002 to the six workmen of the petitioner union and the respondent complied with the directions of High Court by sending the monetary benefits to six workers including the one who was terminated in 2007 on 10-6-2011.

(iii) The settlement, dated 24-10-2002 came to an end on 30-9-2006 and it gave a wage increase of ₹1,500 and an incentive of ₹ 675 for a base output of 13 pairs per man day and consequent to the expiry of the settlement, dated 24-10-2002, all the three unions including the petitioner union representing the workmen submitted a charter of demands and the respondent discussed the LTS with the PELWAA union who signed the last LTS and having majority of workers and in the course of such negotiations, the respondent made a proposal of wage increase of ₹1,400 per month including an improved incentive scheme and however, the workmen refused to understand the constraints of respondent to bear any additional burden by way of increase in wage and chose the path of confrontation, the respondent even improved its offer to ₹ 1,500 p.m., the union refused to accept and sign a settlement and that when the wage settlement was getting delayed due to the higher demand for wage increase, the workers resorted to various illegal actions including go-slow over several months from September 2007 which the output per man day started declining below 13 pairs per man day, the production chart for the year 2006 and 2007 would reveal a consistent reduction in productivity level, the situation in October 2008 became so acute that as against the last average production of about 16 pairs for a day which was agreed to in the 12 (3) settlement in 2002 it came down to a near 3.31 pairs per man, thus, the respondent

completely modernized the plant in the year 2007 and expected an average production of 16 pairs per man, the significant drop through go-slow hurt the business drastically and the workers also suffered huge loss due to low incentive earning, inspite of obvious drops in their earnings, the workmen did not come forward to remedy the situation clearly indicating that the workmen were not having the will to work and the fresh orders from overseas buyers stopped coming in and by October 2008, there was practically no order, nor was production done and since February 2007, the respondent repeatedly communicated to all the workmen through various notices and letters about the danger of such go-slow agitation by the workmen, especially in an export unit which is sensitive to both price as well as timely deliveries which directly impact the viability of the factory.

(iv) It is further stated that despite the various agitations by the workmen, the respondent continued to give opportunity to the unions to have wage negotiation and to arrive at an amicable settlement with the hope that after wage settlement, normal productivity would be restored and the business could be resurrected, finally, since there was no improvement in productivity and the respondent incurred loss in its business because of agitation of workers and their uncompromising attitude coupled with other variable factors it had no options but, to suspend its production activities with effect from 21-10-2008 and that it would have been far easier and simpler for it to have decided on closing the unit after complying with all legal formalities, such closure would have been far more cost effective and hassle free for the respondent but, the respondent in its wisdom considered the collective benefits of its workers and was inclined to be more generous and gratuitous towards its workers who had served the company for good number of years, therefore, instead of closing down the factory, respondent offered a handsome and generous voluntary retirement scheme package to all its workers on 21-10-2008 and initially the management offered an *ex gratia* amount calculated @ 3 months PF wages for every completed year of service and another *ex gratia* of 2½ months wages besides an additional amount of ₹ 50,000 and all the three union, were not satisfied with the compensation offered and wanted it to be improved, accordingly, the management offered an additional amount of ₹ 15,000 to those who accepts the scheme and a further sum of ₹ 10,000 if, everyone accepts VRS, the workmen who were members of the two unions namely Pond's Exports Limited Workers Welfare Association and Pond's Exports Uzhaipavargal

Sangam accepted the VRS and left the service and out of 163 workmen who were then in employment, 97 workmen opted for VRS, received the compensation and left the service.

(v) It is further stated that between 21st October and 29th October 2009, M/s. A. Sivamurthy, S. Kandasamy, J. Jayaraman, P. Thirumal, R. Ramalingam, V. Sundaramoorthy, S. Muthulingam, V. Vijayashankar and B. Balaraman personally approached Mr. Youvarajan, Officer - HR Department and pleaded with him that as they were juniors in services and VRS compensation should be not less than ₹ 3 lakhs and therefore, they should be considered for some additional amount and against which the respondent transferred the 66 workmen to the other units of respondent in other States, which was not accepted by the workers and they raised agitations in various forms including illegal strike, gheraoing picketing, obstructing movement of men and materials, compelling the respondent to approach Civil Court in O.S. 1476/2008 seeking injunction against the striking workers. The petitioner also gave complaints to various authorities, filed writ petitions challenging the transfers and conciliations proceedings. The Government of Puducherry referred the dispute to this Court and in the mean time, the petitioner union filed three writ petitions before the Hon'ble High Court Madras in W.P.No. 26180/2008, 22319/2009 and 399/2010 challenging alleged closure of respondent Unit, the transfer order and for amendment of reference G. O. RT. No.30/AIL/LAB/J/2009, dated 24-3-2009. The Hon'ble High Court *vide* its common order, dated 1-12-2010 directed Government of Puducherry to amend the reference to make it comprehensive covering all the disputes concerning the petitioner and respondent and for adjudication. Accordingly, the Government has referred a comprehensive dispute in I.D(T).3/2011 for adjudication.

(vi) If, the transfer of 66 workers is upheld, the petitioners cannot seek the relief of wage revision as the 66 workers will be governed by the wage patterns and structures as existing the transferred units. The respondent admitted that it had completely stopped its production activities from 21-10-2008 and except for the workforce, the rest of the workforce has left its service. The employees are seeking wage revision from the date of their charter of demands, dated 7-3-2008, If, respondent's decision to suspend its production from 21-10-2008 is upheld, there cannot be a wage revision for a period of 7 months, especially when majority of workers have resigned their job. Therefore,

the adjudication in the present ID is intrinsically dependent on the final outcome of ID(T).3/2011 and hence, the present ID cannot be adjudicated before adjudication of ID(T).3/2011 and the respondent prays that all the proceedings in the present ID shall be either stayed or suspended till the adjudication of dispute in ID(T) 3/2011. The respondent further stated that petitioners have not made out a case for upward revision of wages, a demand for wage revision in term of charter of demands, dated 7-3-2008 without even specifying the exact nature of such demands and the legal, moral and contractual and factual justification for such multifarious demands. Pleadings in claim petition giving vital particulars regarding actual demands raised and the justification for such demands are absolutely essential for the respondent to respond, thus, respondent prays to reject the claim petition for want of necessary pleadings regarding the charter of demands and legal justification for such exorbitant demands. The respondent further stated that in order to claim upward wage revision, the fundamental requirements is to specify the existing wage structure and then plead and prove why the existing wage structure as on the date of raising charter of demands needs to be revised. Pleadings in the claim petition are woefully short of such essential pleadings, there is absolutely no legal, moral or contractual mandate that on expiry of 12(3) settlement or 18(1) settlement governing wages of workers, the employer is bound to make an upward revision in wages and other amenities.

(vii) The balance sheet of Hindustan Unilever Limited as a whole which is a conglomeration of as many as companies manufacturing wide and different ranges of products cannot be the factor to decide the paying capacity of respondent, the performance of respondent unit alone is the *criteria* for deciding its financial capacity, the standard to guide the wages revision. The prospect of respondent's company in future is very bleak, there is no scope for increasing the productivity of workers in near future in view of suspension of production since 21-10-2008 and resignation of 97 workers and transfer of remaining 66 workers, thus, there is no scope for considering the request for any wage revision. Hence, the respondent prays this Court to dismiss the claims made in the dispute.

4. On the side of the petitioner, PW.1 was examined, and Ex.P1 to Ex.P33 were marked. On the side of the respondent RW.1 was examined and Ex.R1 to Ex.R96 were marked.

5. The point for consideration is that whether the dispute raised by the petitioner sangam against the respondent management over charter of demands such as increase of Basic Pay for each grade, annual increment, fixed dearness allowance for 2000 points, variable dearness allowance, HRA, production incentive pay, *etc.*, is justified or not?

6. Both side arguments were heard. On the side of the respondent, written arguments were filed and in support of its case, the learned Counsel for the respondent relied upon the following citations in

- (i) CDJ 1965 SC 339
- (ii) CDJ 1975 SC 518
- (iii) CDJ 2005 Kar HC 403

(iv) Unreported citation in M/s. Bharati Bhawan (P&D), Patna Vs. The State of Bihar and Ors on 29 July, 2015 - by High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 9645 of 2007.

7. It is the evidence of PW.1 that the trade union is registered under the Trade Union Act and its members are permanent workmen of the respondent factory and service conditions of the workers are determined on the basis of the settlement time to time entered and the last wage settlement was signed on 24-10-2002 for four years period came to an end on 24-10-2006 and on expiry of the said settlement, the petitioner union has raised a new charter of demands for wage increase and other allowances for a period of four years from 24-10-2006 and the respondent did not offered any wage increase after 24-10-2006 and they have not come forward to negotiate the wage demand with the petitioner and therefore, they raised the industrial dispute over the revision of wage before the Labour Officer (Conciliation), which was ended in failure on 27-11-2008 and this case was referred to this Court by the Government to decide the dispute raised by the petitioner union against the respondent management over charter of demands such as increase of Basic Pay for each grade, annual increment, fixed dearness allowance for 2000 points, variable dearness allowance, HRA, production incentive pay, *etc.*, are justified or not and that the respondent suspend the production and the workers were illegal laid off and the respondent permanently closed the factory and shifted the same to Potheri village, where the respondent running the factory by the workers who have opted VRS in the respondent factory and those workers who had not opted VRS are denied employment and that therefore, the said dispute has

been raised for fixation of wage, for the period worked from 24-10-2006 to till the date of illegal lay off and consequently shifted the factory to Potheri village and the union members of the petitioner are entitled arrears of revised wage from 24-10-2006.

8. In support of his evidence, the petitioner has exhibited the registration certificate as Ex.P1, list of the union members as Ex.P2, Charter of demands as Ex.P3, reply of the management as Ex.P4, Reply of the petitioner union to the management as Ex.P5, Conciliation notice as Ex.P6, Failure report of the Conciliation Officer as Ex.P7, Reference made by the Government as Ex.P8. These documents and evidence would go to show that the petitioner union has raised the charter of demands before the respondent management and the same was denied by the management and therefore, the conciliation notice was issued and subsequently, the conciliation was failed and the case was referred by the Government to this Tribunal to decide the dispute over the charter of demands. Furthermore, the petitioner has also exhibited the Delivery challan in the name of the respondent as Ex.P9, Profit and Loss account of the respondent as Ex.P10, Form 20 B as Ex.P11 and Ex.P12, declaration form submitted by the respondent as Ex.P13, Export invoice *cum* delivery challan as Ex.P14 to Ex.P17, Form 23 AC as Ex.P18 to Ex.P20, Packing list of Poothurai Factory as Ex.P21, Invoice *cum* challan as Ex.P22, Invoice as Ex.P23, declaration submitted by the respondent as Ex.P24, Consignee copy of respondent factory as Ex.P25, Tax information of the respondent factory as Ex.P26, the financial performance 10 year track record as Ex.P27, Wage settlement of Godrej as Ex.P28, Wage settlement of NCR as Ex.P29, Wage settlement of Hindustan Unilever Limited Daman Detergent Factory as Ex.P30, Wage settlement of HUL Kandla as Ex.P31, wage settlement of HUL Brooke Bond Limited as Ex.P32, wage settlement of Lucas Limited as Ex.P33. From the documents, Ex.P9 to Ex.P12 would evident that the company has not run in the profitable manner and it has met a loss in the financial year 1-1-2007 to 31-12-2007 and these would go to show that the company has no financial capacity and the documents Ex.P28 to Ex.P33 would evident that some of the related establishments have arrived the settlement to raise the wages of the workers.

9. On the other hand, the respondent management has examined the RW.1, the Executive HR of the respondent company and he has deposed that the petitioner union is not a recognized one and it is only

the minority trade union when they submitted the charter of demands to the respondent and that there was two other unions in the respondent factory which are majority union and that the respondent factory has given best wages and other privileges to its workers and on expiry of wage settlement in October, 2006 only the majority unions have submitted the charter of demands and the respondent management has held wage discussion with the PELWWA union as it was the majority union and the workers of the petitioner union have reduced their works by go slow tactics from January 2007 and the production of the finished shoes were reduced to 16 pairs per day and to improve the same various notices were given by the respondent to the union members and because of the continuous defiance, the respondent could not revive production and sustained losses for more than 3 years and the establishment had to cease production on 21st October, 2008 since there is no new orders and continuous loss for more than 1½ years due to the illegal activities of the workers and hence, it become completely unviable and there was no new orders for production and suspend the production activities with effect from 21-10-2008 and offered Voluntary Retirement Scheme to all the workers on 21-10-2008 and out of the total 163 workers, 97 workers accepted the VRS and only 66 workers wanted re-employment and that therefore, they have been transferred to various units but, it was not accepted by the workers and that they have raised the industrial dispute challenging the transfer and other issues and it is pending before this Court in I.D.No.3/2011 and that claim statement is very vague and lacks material particulars such as the last drawn wages of workers, the precise and exact of revision to each of workers, jurisdiction for such hike in the wage structure.

10. The respondent also exhibited Ex.R1 to Ex.R96. Ex.R2 to Ex.R28 would evident that there was a settlement for the year 2002-2006 made under section 18(1) of Industrial Disputes Act on 24-10-2002 and the respondent factory has issued notice to improve the production on various dates on 14-3-2007, 26-6-2007, 11-7-2007, 17-7-2007, 20-8-2007, 13-12-2007, 16-4-2008, 18-4-2008, 19-4-2008, 21-4-2008, 2-5-2008, 5-5-2008, 6-5-2008, 8-5-2008, 9-5-2008, 22-5-2008, 30-5-2008, 2-6-2008 and 7-8-2008, in which it was stated by the respondent management that the workers not to indulge in go slow production and the management has also requested to restore normal production and other notices were issued to the workers on 12-8-2008, 20-8-2008, 27-8-2008, 5-9-2008 and 9-9-2008 advising the workers to increase productivity and it is also revealed from the Ex.R29 to Ex.R38 notices of

the management that the management has informed the union and its members to avoid to tactics on go slow production with details. Ex.R39 to Ex.R45 would also evident that notices given by the respondent management announcing the VRS scheme to the union and its members on various dates. Ex.R46 to Ex.R83 would reveal that union has sent a letter to the Conciliation Officer, Factory Manager, Labour Commissioner, Station House Officer, Tahsildar and these six workers have been transferred and the union also sent a letter to Government authorities, Conciliation Officer on VRS and conciliation proceedings were failed on 20-2-2009 and that therefore, the reference was made by the Labour Department on 24-3-2009 and some of the employees have opted for VRS and on 17-2-2010, the meeting was held. Ex.R84 to Ex.R96 would reveal the fact that the respondent company has made an agreement with Maulik Leather Crafts and with Auroma Leather Crafts and the said agreement was renewed by the respondent management and also the said agreement was registered and licence was obtained.

11. From the above evidence and documents, it is to be seen that whether the petitioner has established their case and whether they are entitled for the revised scale as claimed by them in the claim statement. On this aspect, the evidence and records are carefully perused. These are the admitted fact that the members of the petitioner union are the workmen of the respondent factory till 21-10-2008 and that there was settlement made between the respondent management and the workers under section 18(1) of the Industrial Disputes Act for a period of 4 years regarding their revision of pay and it is also not in dispute that the settlement came to an end on 30-9-2006 and subsequently the petitioner union has raised the said dispute claiming the wage revision and other allowances from the respondent management. It is also an admitted fact that the respondent has closed the factory on 21-10-2008 and before the closure of the factory, they have announced for the Voluntary Retirement Scheme to its workers and the same was accepted by the majority of workmen, 97 out of 163 and the remaining 66 were transferred to the other units held by the respondent management and it is also not in dispute that there was three union in the respondent factory and the settlement was arrived in the year 2002 for the period till 24-10-2006 with the PELWWA union.

12. It is also admitted by both sides that the respondent has suffered due to the go slow work and was not able to run the factory profitably, various notices were given to improve the production for the

period from 2006 to 2008 and even after that notices since there was no improvement in the production, the company has been closed on 21-10-2008 and the management has not accepted the charter of demands made by the petitioner union to revise the wage and allowances and it is also admitted that now, the factory is not in existence and it was closed by the respondent management in the year 2008 itself and except these six employees, other employees have not raised any dispute regarding their wages since they have accepted 18(1) settlement arrived between the respondent management and the PELWWA union and most of the employees have accepted the voluntary retirement scheme and these employees have only raised this dispute and the petitioner union members have not signed the Ex.P3 and Ex.P5 and it is also admitted by the petitioner union that the factory has been closed since the production was very low and the factory was not running profitably and that therefore, it can be held that closure of business by the respondent management is not illegal and that therefore, it is to be decided whether the refusal made by the respondent management to revise the wages and allowances to the petitioner can be accepted or not.

13. It is the main contention of the respondent that the petitioner union is a not a recognized union and it can not raise the dispute for wage revision and also the respondent factory has two more union in the name PELWWA and PEUS which were the majority unions. These fact would reveal from Ex.R1 that the trade union in the name of PELWWA has signed the settlement, dated 24-10-2002. On the other hand, it is also not established by the petitioner that the petitioner union is a major union and also recognized union and nothing is before this Court to infer that it is a major union or recognized by the respondent management. The pleadings of the petitioner union is very silent with regard to the above. On this aspect, the evidence of PW.1 considered and the evidence of PW.1 runs as follows:

“7-3-2008-ம் தேதி நாங்கள் கொடுத்த கோரிக்கை சாசனத்திற்கு 18-3-2008 நிர்வாகம் பதில் கொடுத்துள்ளது என்ற சொன்னால் சரிதான். மேற்படி பதிலில் எங்களது சங்கம் குறைந்த நபர்கள் கொண்ட சங்கம் என்று அதிக நபர்கள் கொண்ட சங்கம் இல்லை என்று உள்ளது என்றால் சரிதான். நாங்கள் கோரிக்கை சாசனம் கொடுக்கும் போது எதிர்மனுதாரர் நிர்வாகத்தில் மொத்தம் 3 சங்கங்கள் இயங்கி வந்தன என்றால் சரிதான். மேற்படி கடிதத்திற்கு 31-3-2008-ம் தேதி பதில் கடிதம் கொடுத்துள்ளோம். Ex.P5 இணைக்கப்பட்டுள்ள உறுப்பினர்களின் பெயர்களுக்கு எதிரே அவர்களின் கையொப்பம் பெறவில்லை என்று சொன்னால்

சரிதான். ஆனால், மேற்படி அவர்கள் எங்கள் சங்க உறுப்பினர்கள் ஆவர். 2008-ம் ஆண்டு நிர்வாகத்திடம் கோர்க்கை சாசன கொடுக்கும்போது சங்க பதிவாளர் அனுசலகத்திற்கு, எங்கள் சங்க கணக்கு வழக்கை தாக்கல் செய்யவில்லை என்றால் சரிதான். மேற்படி காலக்கட்டத்தில் எங்கள் சங்கத்திற்குரிய பதிவு செய்ததை, பதிவாளர் தொழிற் சங்கங்கள் அலுவலகத்திலிருந்து உரிய உரிமம் பெறவில்லை. அது போல் தொழிலாளர் பட்டியலை பெறவில்லை என்றால் சரிதான். இந்த வழக்கு தாக்கல் செய்த பின்பும் நீதிமன்றத்தில் பதிவாளர் சங்கங்கள் trade union அலுவலகத்திலிருந்து எங்கள் சங்க உறுப்பினர் பட்டியலை தாக்கல் செய்து கொடுக்கவில்லை. எங்களது சங்க உறுப்பினர்களிடம் வசூலிக்கப்படும் சந்தா மற்றும் செலவு வரவு கணக்கு விபரங்களை வருடா வருடம், trade union-க்கு தாக்கல் செய்ய வேண்டும் என்றால் சரிதான். தொடர்ந்து 3 வருடங்கள் தொடர்ச்சியாக சந்தாவை கட்டவில்லை மற்றும் கணக்குகளை சம்மந்தப்பட்ட trade union-க்கு தாக்கல் செய்யவில்லை என்றால் அந்த சங்கம் ரத்து செய்யப்படும் என்று சொன்னால் அது பற்றி எனக்கு தெரியாது. இந்த வழக்கில் நீதிமன்றத்தில் தாக்கல் செய்த பிறகும், எங்கள் சங்கம் ஆரம்பிக்கப்பட்ட நாளிலிருந்து, வரவு மற்றும் கணக்குகளை தாக்கல் செய்யவில்லை என்றால் சரிதான். Ex.P2W-ல் குறிப்பிட்ட பெயர்களின் நபர்களை குறிப்பிடவில்லை. எதிர்மனுதாரர் நிர்வாகமான Pond's Exports Unit Welfare Association-நிர்வாகத்திற்கும் 2002-ம் ஆண்டு 18(1) ஒப்பந்தம் ஏற்பட்டது என்று சொன்னால் சரிதான். மேற்படி ஒப்பந்தத்தை எதிர்மனுதாரர் நிர்வாகத்திடம் பணி புரியும் 6 நபர்களை தவிர மற்றவர்கள் ஒப்புக்கொண்டனர் என்றால் சரிதான்”.

From the above evidence, it is clear that PW.1 has admitted that there was three unions in the respondent establishment and the petitioner union has not obtained any signature from its members and the petitioner union has not submitted the members list to the Registrar of trade union and also admitted that settlement under section 18(1) of the Industrial Disputes Act arrived at between the respondent management and PELWWA union on 24-10-2002 and except these six union members others have accepted the settlement and their salary has been revised. These fact would go to show that petitioner himself admitted that except these six union members, all other workers of the respondent factory has accepted the settlement and their salary has been revised as per the settlement arrived at between the respondent management in the year 2002 under section 18(1) of Industrial Disputes Act.

14. The learned Counsel for the respondent relied upon the Judgment reported in CDJ 2005 Kar HC 403. The President Labour Organization of HAL Vs. The Management of Hindustan Aeronautics Limited wherein, the Hon'ble Karnataka High Court has been held that-



*"In the instant case it is not in dispute that in the industrial establishment there is another registered trade union which admittedly has membership of more than 80% of the employees. The management has recognized the said union. In so far as the petitioner union is concerned till today they are not able to give list of the members of the union. They are unable to state how many members are there in their union. Though in the counter statement it was specifically stated that the union is not duly authorized to espouse the dispute and they have no **locus standi** to represent the workers of the establishment except producing the certificate of registration, bye-laws and a copy of the resolution passed by the Executive Committee nothing is placed on record to show the membership of the union and the number of persons it represent. In fact the respondents have filed along with the statement of objections an affidavit stating that seven members who have subscribed to the memorandum of association to the petitioner union since have retired on reaching the age of superannuation and all of them earlier were members of the recognized union and, therefore, it is contended that this union is not a representative union of the employees of the industrial establishment and, therefore, they have no **locus standi** to espouse the dispute. .... Under these circumstances, as rightly held by the Industrial Tribunal, the petitioner is not a representative union of the entire employees of the establishment, they have no **locus standi** to raise this industrial dispute and the Government was in total error even in making the reference to the Industrial Tribunal for adjudication, though this objection was raised by the management at the earliest point of time, at the conciliation. I do not find any merit in this petition. Accordingly, it is dismissed. No costs".*

From the above observation, it is clear that the dispute pertains to the entire labour force can be raised only by the recognized majority union and the union which is not a recognized one cannot be termed as representative union of the employees of the industrial establishment and therefore, the petitioner union is not a representative union of the entire workmen of the respondent establishment and they have no *locus standi* to raise the industrial dispute and it is also pointed out by the respondent Counsel that an unrecognized union cannot raise the demands of general nature and it can only negotiate the individual problems of the members of individual nature and that therefore, it is clear that the petitioner union has

absolutely no *locus standi* to raise the industrial dispute of wage revision since it is the minority union and also unrecognized by the respondent establishment and furthermore, it is also pointed out by the respondent management, the petitioner union has not laid any evidence to prove the existing wage structure of the respondent's factory and it is also not established by the petitioner that which of the wage has to be raised and on what basis it can be raised and wage and allowance can be raised by putting the material evidence before this Court and considering the above facts that the financial position of the respondent factory and what is the wage being obtained by the other workers in the same industry situated in the region and what is the emoluments that each and every worker would receive if, the charter of demand is accepted by the Tribunal have not been established by the petitioner union.

15. Further, the learned Counsel for the respondent has also relied upon the following decisions :

M/s Bharati Bhawan (P&D), Patna Vs. The State of Bihar and Ors. on 29 July, 2015 - Civil Writ Jurisdiction Case No. 9645 of 2007. Wherein, the Patna High Court has been held that:

*"In series of cases, it has been held by Apex Court of this Country that fixation of wages and dearness allowance has to be done on industry-cum-region basis having regard to the financial capacity of the industry. .... The industrial adjudicator has to take due note of the position of the employer **per se** and in relation to other comparable concerns, the nature of the business of the employer the financial capacity of the employer, the financial and economic conditions."*

Mathura Prasad Srivastava & Others Vs. Saugor Electric Supply Company Limited and Another reported in CDJ 1965 SC 339, wherein, the Hon'ble Supreme Court of India has been held that

"The Tribunal then considered the question of revision of wages and in that connexion went into the financial capacity of the company to bear the burden of increase in wages. It found that the profit of the company in the year 1959-60 was ₹ 32,986. It also found that the increase in wage-scales demanded by the workman would add ₹ 30,000 annually to the wage-bill with a recurring increase of ₹ 5,000 annually on account of increments. It, therefore, held, that the company was not in a financial position to bear

the burden of increase in wages..... We have already set out the reasons which impelled the Tribunal to reject the claim for revision of wages. The reasons given by the Tribunal for not increasing the wages appear to us to be sound. The financial position of the company is such that it cannot bear the burden of a further wage-increase. As the Tribunal has pointed out, the net profit for the year 1959-60 was only ₹ 32,986. While the wage-increase demanded was of the order of ₹ 30,000 for one year and thereafter, there would be an increase at the rate of ₹ 5,000 per year on account of incremental scales. Obviously, the company has not the financial capacity to bear this increase in wages. We, therefore, confirm the order of the Tribunal rejecting the increase in wages.”

Sangam Press Limited Vs. Workmen reported in CDJ 1975 SC 518, wherein, the Hon'ble Supreme Court of India has been held that,

In a case of a fair wage, besides the principle of industry-cum-region, the company's capacity to bear the financial burden must receive due consideration. The past performances of the company and the future prospects with a totality of the picture must be present in the mind of the adjudicator in deciding a dispute of this nature.... Whether the Poona presses in the aforesaid Award are comparable concerns may require investigation into facts. We, therefore, declined to permit the learned Counsel to sustain the Award on other grounds in this appeal”.

From the above observations, it is also clear that the Tribunal has to consider the financial capacity of the company to bear the burden of increase in wages and the profit of the company and the increase in wage-scales demanded by the workmen has to be considered. On this aspect, the documents exhibited by the petitioner Ex.P10 to Ex.P12 were perused. Those documents would reveal that the company was run of profit of ₹1,137 for the period of 1-1-2006 to 31-6-2006 and also the company was on loss for a tune of ₹ 22,173 for the period of 1-1-2007 to 31-12-2007. PW.1 has also admitted the above fact in his cross examination and therefore, considering the financial condition of the respondent factory, we can not directed to revise the wage scale for the period as claimed by the petitioner union and in this case also the financial position of the respondent company to bear the burden of increase of wages has not been established by the petitioner.

16. These facts and circumstances would go to show that the respondent company has been closed since the company met with loss and has not earn any profit and therefore, the reasons stated by the petitioner to

revise the wage and to increase the allowances can not be accepted since the company has not having the capacity to bear the increase in wages and that therefore, the charter of demands cannot be accepted as prayed by the petitioner and therefore, they are not entitled for any relief as prayed for.

17. In the result, the petition is dismissed. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 6th day of April, 2017.

**G. THANENDRAN,**  
Presiding Officer  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

*List of petitioner's witness:*

PW. 1—14-2-2014 - Pannerdasee

*List of petitioner's exhibits:*

Ex.P1	8-8-1995	Copy of the union registration certificate.
Ex.P2	—	Copy of the union member list.
Ex.P3	7-3-2008	Copy of the petitioner union charter of demand.
Ex.P4	18-3-2008	Copy of the respondent management reply.
Ex.P5	31-3-2008	Copy of the petitioner reply to the management reply.
Ex.P6	21-5-2008	Copy of the Conciliation notice.
Ex.P7	27-11-2008	Copy of the Failure report
Ex.P8	15-12-2008	Copy of the Government reference.
Ex.P9	13-2-2009	Copy of the Delivery challan stands in the name of respondent.
Ex.P10	—	Copy of the Profit and loss account of the respondent and Form 23 Ac submitted before the Company Law Board.
Ex.P11	31-3-2010	Copy of the Form 20B.
Ex.P12	25-7-2011	Copy of the Form 20B.

Ex.P13	22-4-2013	Copy of the Declaration Form submitted by respondent before Central Excise Department.
Ex.P14	22-4-2013	Copy of the Export invoice of 3rd respondent.
Ex.P15	22-4-2013	Copy of the Export invoice-cum-delivery challan.
Ex.P16	22-4-2013	Copy of the Export invoice-cum-delivery challan.
Ex.P17	22-4-2013	Copy of the Export invoice-cum-delivery challan.
Ex.P18	1-4-2013	Copy of the Form 23AC.
Ex.P19	20-7-2012	Copy of the Form 23AC.
Ex.P20	25-7-2012	Copy of the Form 23AC.
Ex.P21	27-7-2012	Copy of the packing list in Poothurai factory.
Ex.P22	27-7-2012	Copy of the Invoice-cum-challan.
Ex.P23	10-7-2012	Copy of the Invoice.
Ex.P24	10-7-2012	Copy of the Respondent declaration submitted before Central Excise Department.
Ex.P25	27-7-2012	Consignee copy of respondent factory.
Ex.P26	28-7-2012	Copy of the Tax information of the respondent factory.
Ex.P27	—	Copy of the Financial performance 10 year track record.
Ex.P28	—	Copy of the Wage settlement of Godrej.
Ex.P29	—	Copy of the Wage settlement of NCR.
Ex.P30	13-12-2007	Copy of the Wage settlement of Hindustan Unilever Limited Daman Detergent Factory.
Ex.P31	4-12-2008	Copy of the Wage settlement of HUL Kandla.
Ex.P32	23-3-2011	Copy of the Wage settlement of HUL Brooke Bond Ltd.,

Ex.P33 — Copy of the Wage settlement of Lucas Ltd.,

*List of respondent's witness:*

RW. 1—22-1-2016 - Youvarajan

*List of respondent's exhibits:*

Ex.R1—23-12-2015 - Letter of Authorization.

Ex.R2—24-10-2002 - Copy of the long term settlement 2002-2006.

Ex.R3—07-02-2003 - Copy of the memorandum of understanding.

Ex.R4—14-3-2007 - Copy of the notice to improve production displayed at factory.

Ex.R5—26-6-2007 - Copy of the notice displayed at factory

Ex.R6—11-7-2007 - Copy of the notice on go slow and to improve production displayed at factory.

Ex.R7—17-7-2007 - Copy of the notice to improve production/quality displayed at factory.

Ex.R8—20-8-2007 - Copy of the notice to improve production displayed at factory.

Ex.R9—13-12-2007 - Copy of the notice to improve production displayed at factory.

Ex.R10—16-4-2008 - Copy of the notice to improve production displayed at factory.

Ex.R11—18-4-2008 - Copy of the notice to improve production and not to indulge in go slow displayed at factory.

Ex.R12—19-4-2008 - Copy of the notice to improve production displayed at factory.

Ex.R13—19-4-2008 - Copy of the notice to desist from slowing down displayed at factory.

Ex.R14—21-4-2008 - Copy of the notice to improve production displayed at factory.

Ex.R15—2-5-2008 - Copy of the notice on conveyor displayed at factory.	Ex.R30—5-7-2008 - Copy of the letter to PELWWA Union on go slow with details.
Ex.R16—5-5-2008 - Copy of the notice to improve production displayed at factory.	Ex.R31—5-7-2008 - Copy of the letter to PEUS Union on go slow with details.
Ex.R17—6-5-2008 - Copy of the notice to restore normal production displayed at factory.	Ex.R32—7-8-2008 - Copy of the letter to PELWWA Union on wage cut and not to indulge in go slow with details.
Ex.R18—8-5-2008 - Copy of the notice to restore normal production displayed at factory.	Ex.R33—19-8-2008- Copy of the letter to PHLTS Union on go slow.
Ex.R19—9-5-2008 - Copy of the notice to improve production displayed at factory.	Ex.R34—1-9-2008 - Copy of the letter to Coordinated Unions Association regarding go slow.
Ex.R20—22-5-2008 - Copy of the notice to improve production displayed at factory.	Ex.R35—4-9-2008 - Copy of the letter to Coordinated Union's Association regarding go slow/wage cut.
Ex.R21—30-5-2008 - Copy of the notice to improve production displayed at factory.	Ex.R36—10-9-2008- Copy of the letter to Coordinated Union's Association regarding forcing to remove mgt.
Ex.R22—2-6-2008 - Copy of the notice to improve production displayed at factory.	Ex.R37—11-9-2008- Copy of the letter to Coordinated Union's Association regarding delay in commencement of production.
Ex.R23—7-8-2008 - Copy of the notice on go-slow displayed at factory.	Ex.R38—17-9-2008- Copy of the letter to Coordinated Union's Association regarding go slow.
Ex.R24—12-8-2008 - Copy of the notice advising to restore normally displayed at factory.	Ex.R39—11-10-2008- Copy of the letter from PHLTS union.
Ex.R25—20-8-2008 - Copy of the notice advising to increase productivity displayed at factory.	Ex.R40—22-10-2008- Copy of the letter to workers by Coordinated Union's Association regarding VRS.
Ex.R26—27-8-2008 - Copy of the notice advising to increase productivity displayed at factory.	Ex.R41—21-10-2008- Copy of the notice on VRS announcement by management.
Ex.R27—5-9-2008 - Copy of the notice not to indulge go-slow activities displayed at factory.	Ex.R42—22-10-2008- Copy of the notice on VRS announcement by management.
Ex.R28—9-9-2008 - Copy of the notice advising to increase productivity displayed at factory.	Ex.R43—23-10-2008- Copy of the notice on VRS additional amount by management.
Ex.R29—21-6-2008 - Copy of the letter to union with annexures.	Ex.R44—23-10-2008- Copy of the notice on other benefits of VRS by management.

Ex.R45—25-10-2008 -Copy of the notice to the VRS opted employees.	Ex.R65—8-11-2008 - Copy of the notices on overstay.
Ex.R46—29-10-2008 -Copy of the union letter to Conciliation Officer.	Ex.R66—8-11-2008 - Copy of the letter to Station House Officer on unauthorized protests.
Ex.R47—31-10-2008 -Copy of the union letter to Factory Manager.	Ex.R67—15-11-2008-Copy of the notice to all the transferred employees.
Ex.R48—1-11-2008 - Copy of the union letter to Labour Commissioner.	Ex.R68—21-11-2008-Copy of the notice of enquiry from Conciliation Officer.
Ex.R49—5-11-2008 - Copy of the letter to Station House Officer.	Ex.R69—24-11-2008-Copy of the reply to Conciliation Officer notice.
Ex.R50—5-11-2008 - Copy of the letter to Tahsildar.	Ex.R70—22-12-2008-Copy of the notice from Commissioner of Labour.
Ex.R51—6-11-2008 - Copy of the report in non-cognizable offences.	Ex.R71—2-1-2009 - Copy of the letter by Management on wages dispute to Labour Commissioner.
Ex.R52—5-11-2008 - Copy of the notice on transfer.	Ex.R72—22-12-2008-Copy of the notice from Commissioner of Labour.
Ex.R53—5-11-2008 - Copy of the transfer letters of 66 with entitlements.	Ex.R73—5-1-2009 - Copy of the reply letter to notice from LC, dated, 22-12-2008.
Ex.R54—6-11-2008 - Copy of the union letter to Government Authorities on VRS.	Ex.R74—22-1-2009 - Copy of the letter to Management to Conciliation Officer on 2248/08/LO(C)/ All dispute.
Ex.R55—6-11-2008 - Copy of the union letter Conciliation Officer on VRS.	Ex.R75—13-2-2009 - Copy of the letter from union to Labour Commissioner.
Ex.R56—6-11-2008 - Copy of the advisory notice on overstay.	Ex.R76—20-2-2009 - Copy of the report on failure of conciliation.
Ex.R57—6-11-2008 - Copy of the letter from Conciliation Officer on Service Condition.	Ex.R77—24-3-2009 - Copy of the Government order Labour Department reference of ID.
Ex.R58—24-11-2008-Copy of the reply to Conciliation Officer notice 6-11-2008.	Ex.R78—9-4-2009 - Copy of the show cause notice from Labour Department.
Ex.R59—7-11-2008 - Copy of the Letter to Inspector of Factories on inspection.	Ex.R79—27-4-2009 - Copy of the reply from Management on show cause notice.
Ex.R60—7-11-2008 - Copy of the letter to Conciliation Officer on overstay.	Ex.R80—1-6-1997 - Copy of Confirmation Order of an employee.
Ex.R61—7-11-2008 - Copy of the report from Police Station to Labour Commissioner.	Ex.R81—4-2-2009 - Copy of the letter from Arokiyadass on request for VRS.
Ex.R62—7-11-2008 - Copy of the notice on overstay.	
Ex.R63—7-11-2008 - Copy of the complaint letter to Police Station by Management.	
Ex.R64—7-11-2008 - Copy of the notice on overstay.	

Ex.R82—30-4-2009-	Copy of the letter from P. Janakiraman on request for VRS.	Ex.R90—4-9-2004-	Copy of the Auroma Leather Crafts renewal letter.
Ex.R83—17-2-2010-	Copy of the points discussed during the meeting on 17-2-2010.	Ex.R91—31-12-2007-	Copy of the Auroma Leather Crafts renewal letter.
Ex.R84—1-9-1999-	Copy of the agreement with Maulick Leather Crafts.	Ex.R92—26-12-2009-	Copy of the Auroma Leather Crafts renewal letter.
Ex.R85—1-8-2004-	Copy of the Maulick Leather Crafts renewal letter.	Ex.R93—31-12-2010-	Copy of the Auroma Leather Crafts renewal letter.
Ex.R86—1-8-2008-	Copy of the Maulick Leather Crafts renewal letter.	Ex.R94—31-12-2011-	Copy of the Auroma Leather Crafts renewal letter.
Ex.R87—31-8-2010-	Copy of the Maulick Leather Crafts renewal letter.	Ex.R95—31-12-2011-	Copy of the certificate of Registration under Contract Labour (Regulation and Abolition) Act 1970.
Ex.R88—18-8-2011-	Copy of the Maulick Leather Crafts renewal letter.	Ex.R96—	— Copy of the factory licence.
Ex.R89—1-10-2003-	Copy of the agreement with Auroma Leather Crafts.		

**G. THANENDRAN,**  
Presiding Officer  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(G.O. Ms. No. 10/Lab./AIL/G/2017, Puducherry, dated 29th June 2017)*

**NOTIFICATION**

Whereas, the proposal for revision of minimum rates of wages payable to the employees engaged in Carpentry and Blacksmithy Industries in the Union territory of Puducherry, was published as required under clause (b) of sub-section (1) of section 5 of the Minimum Wages Act, 1948 (Central Act 11 of 1948) in the Labour Department's notification issued *vide* G. O. Ms. No. 13/Lab./AIL/G/2016, dated 10th November, 2016, published in the Official Gazette No. 48, dated 29th November 2016, inviting objections and suggestions from all persons likely to be affected thereby, within sixty days from the date of publication of the said notification in the Official Gazette of Puducherry;

2. And whereas, the said Gazette notification was notified for information of the general public on 29th November, 2016;

3. And whereas, pursuant to the said notification no objections or suggestions have been received within the abovesaid stipulated time-limit;

4. And whereas, though no objections or suggestions have been received within the abovesaid stipulated time-limit, a meeting was convened on 23-2-2017 with the employers' and employees' representatives under the Chairmanship of Secretary to Government (Labour), Puducherry to hear their views/suggestions in respect of the minimum rates of wages notified in the employment of Carpentry and Blacksmithy Industries in the Union territory of Puducherry;